

Marina Coast Water District
Agenda Transmittal

Agenda Item: 8-D

Meeting Date: July 12, 2011

Submitted By: Paula Riso
Reviewed By: Carl Niizawa

Presented By: Paula Riso

Agenda Title: Approve the Draft Minutes of the Special Board Meeting of May 24, 2011

Detailed Description: The Board of Directors is requested to approve the attached draft minutes of May 24, 2011.

Environmental Review Compliance: None required.

Prior Committee or Board Action: None.

Board Goals/Objectives: *Strategic Plan, Mission Statement – Providing high quality water, wastewater and recycled water services to the District's expanding communities through management, conservation and development of future resources at reasonable costs.*

Financial Impact: ___Yes ___X___No

Funding Source/Recap: None.

Material Included for Information/Consideration: Draft minutes of May 24, 2011.

Staff Recommendation: The Board of Directors approve the draft minutes of the May 24, 2011 special Board meeting.

Action Required: ___Resolution ___X___Motion ___Review

Board Action

___Resolution No___ Motion By___ Seconded By___

Ayes___ Abstained___

Noes___ Absent___

Reagendized___ Date___ No Action Taken___

Marina Coast Water District

District Offices
11 Reservation Road
Marina, California

Special Board Meeting
May 24, 2011
5:30 p.m.

Draft Minutes

1. Call to Order:

President Lee called the meeting to order at 5:30 p.m. on May 24, 2011.

2. Roll Call:

Board Members Present:

Bill Lee – President
Dan Burns – Vice President
Howard Gustafson
Jan Shriner
Kenneth K. Nishi

Board Members Absent:

None.

Staff Members Present:

Jim Heitzman, General Manager
Lloyd Lowrey, Legal Counsel
Carl Niizawa, Deputy General Manager/District Engineer
Jean Premutati, Management Services Administrator
Kelly Cadiente, Director of Administrative Services
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Bob Holden, MRWPCA
Betty Nebb, MRWPCA
Carmelita Garcia, Mayor of Pacific Grove
Don Evans, Evans Group
Matthew Challis, Piper Jaffray

The Board entered into closed session at 5:30 p.m.

3. Closed Session:

- A. Pursuant to Government Code 54956.95
Liability Claims
Claimant: Ausonio Incorporated
Agency Claimed Against: Marina Coast Water District
- B. Pursuant to Government Code 54956.9
Conference with Legal Counsel – Existing Litigation
(Subdivision (a) of Section 54956.9)
Ag Land Trust v. Marina Coast Water District and Does 1-100, Monterey County
Superior Court Case No. M105019 (First Amended Petition for Writ of Mandate and
Complaint for Declaratory Relief)
- C. Pursuant to Government Code 54957
Public Employee Performance Evaluation
Title: General Manager
- D. Pursuant to Government Code Section 54957.6
Conference with Labor Negotiators
Agency Designated Representatives: William Lee and Dan Burns
Unrepresented Employee: General Manager

4. Reconvene Open Session

The Board ended closed session at 6:42 p.m.

President Lee reconvened the meeting to open session at 6:45 p.m.

5. Possible Action on Closed Session Items:

Mr. Lloyd Lowrey, Legal Counsel, reported the following:

- 3-A – there was a conference with Legal Counsel and no action was taken.
- 3-B – there was a conference with Legal Counsel and no action was taken.
- 3-C – no action was taken.
- 3-D – no action was taken.

6. Pledge of Allegiance:

President Lee asked Mr. Don Evans, Evans Group, to lead everyone present in the pledge of allegiance.

7. Presentation:

A. Presentation by Piper Jaffray on the Conceptual Financial Plan for the Regional Desalination Project:

Mr. Jim Heitzman, General Manager, introduced Mr. Matt Challis, Piper Jaffray, and Mr. Don Evans, explaining that they would be giving a presentation on the conceptual financial plan. Mr. Evans commented that he and Mr. Challis have been working together for nearly two years on this project and this conceptual level plan is essentially a framework. Mr. Evans commented that a written report will be completed within the next thirty to sixty days.

Mr. Challis' presentation included background information on Piper Jaffray; a market commentary; financing strategy alternatives; advantages and disadvantages; comparative summary; timing of financing alternatives; and recommendations.

Mr. Heitzman commented that the Project was approved with the State Revolving Fund though that does not guarantee funds will be granted. There is a meeting in Sacramento with the United States Bureau of Reclamation Department in June to further define the plan.

Mr. Heitzman referred to the Coastal Permit Application on the table in front of him, noting that it was available for review by anyone interested.

The Board members asked several clarifying questions.

8. Action Item:

A. Consider Authorizing Engagement by the District of Jeanine DeBacker of Hoge, Fenton, Jones and Appel to Investigate and Report on Complaint of Hostile Work Environment:

Mr. Heitzman introduced this item. Director Shriner commented that she had retained an attorney regarding this matter and asked if she should recuse herself. Mr. Lloyd Lowrey, Legal Counsel, answered affirmatively.

Director Shriner recused herself from the dais at 7:45 p.m.

Vice President Burns made a motion to authorize engagement by the District of Jeanine DeBacker of Hoge, Fenton, Jones and Appel to investigate and report on a complaint of hostile work environment. Director Gustafson seconded the motion. Director Nishi commented that the District's Legal Counsel, at a previous meeting, reported that Directors have a responsibility of diligence, prudence, loyalty and fairness. Director Nishi commented that the rules the Board is governed by is the Board Procedures Manual. The Board has to insure that the District is free from all forms of harassment.

Action Item 8-A (continued):

Director Nishi commented that the Board was notified in December that a hostile environment was occurring. He stated that there was no action by the Board to mitigate the situation to see if it was true or not. Director Nishi stated that after nearly six months the situation is now being addressed. He said that the Board has to take responsibility for the leadership in solving the issues and cannot continue to expend ratepayers' funds because a Director does not follow the rules that were agreed to when they took the Oath of Office.

Director Nishi read the following excerpt from Section 7 of the Board Procedures Manual:

7. Duties of the Directors Acting as Members of the District Board of Directors.

The duties of the directors include:

E. assuring the District is responsive to the interests of the voters and the needs of the persons served by the District;

F. assuring that the actions of the Board and of each director and the actions of all employees of the District conform to all federal, state, and local statutes and ordinances, and to the ordinances, rules, regulations and policies of the District;

G. assuring that each employee of the District and each constituent of the District is treated courteously and fairly by the District, and that privacy rights of District employees and constituents are safeguarded in accordance with law;

H. making reasonable and diligent inquiry of competent, qualified and reliable advisors and other sources to obtain sufficient information for informed and timely decisions and judgments;

P. assuring that the conduct of the District's business is open and public and that actions and records of the District are taken and held in confidence only as permitted by law and as necessary to safeguard the assets of the District and to protect the rights of the District's employees;

Q. protecting confidential information of the District, its officers and employees from unauthorized disclosure and dissemination;

Director Nishi also read an excerpt from Section 14 of the Board Procedures Manual.

Action Item 8-A (continued):

14. Code of Ethics.

- G. Differing viewpoints are healthy in the decision-making process. Individuals have the right to disagree with ideas and opinions, but without being disagreeable. Once the Board takes action, directors shall commit to supporting said action and not to creating barriers to the implementation of said action.
- H. Any complaints from constituents or others dealing with the District should be referred to the General Manager and may be followed up by the Board.
- J. In seeking clarification for policy-related concerns, especially those involving personnel, legal action, property, finance, projects and programs, said concerns should be referred directly to the General Manager.
- L. The work of the District is a team effort. All individuals should work together in a collaborative process, assisting each other in the conduct of the District's affairs.
- M. Directors should develop a working relationship with the General Manager wherein current issues, concerns and District projects can be discussed comfortably and openly.
- N. Directors should function as part of the whole. Issues should be brought to the attention of the Board as a whole, rather than to individual members selectively.
- P. Harassment, in any form, will not be tolerated.
- Q. Directors shall protect confidential information of the District, its officers and employees from unauthorized disclosure and dissemination.

Director Nishi commented that Directors should understand what the intent of the job is, not their personal agenda. He stated that their job is to benefit their constituents by working together with their fellow team members. Director Nishi said the Board needs to insure that MCWD provides high quality water, wastewater and recycled water services through management, conservation and development of future resources at a reasonable cost. Director Nishi commented that the Board should be put on notice that all Directors should receive the President's approval and permission before soliciting the General Manager's time. He added that there should be a report showing the amount of money spent by each Director from last December's inquires. Director Nishi commented that the behavior of Director Shriner is not in the best interest of the ratepayers. He said that she should conform to the Board Procedures Manual and Code of Ethics training that she agreed to. Director Nishi stated that if Director Shriner continues to behave as she has in the past, the District Board has no choice but to recognize that her inappropriate behavior is her own and not the Marina Coast Water District's Board. He added that the Board should take action to correct this wrong. Director Nishi said he did not support spending additional funds to hire this attorney. He said that it is the District's responsibility to let a Director know that the actions they are taking are a violation of the Code of Ethics and the Board Procedures Manual and separate the actions of that one member from the rest of the Board. Director Nishi said that he cannot support this action spending additional funds on top of the funds Director Shriner has already expended. He said it is the Board's job to solve the problem.

Action Item 8-A (continued):

Vice President Burns asked for clarification on the fact that once a claim has been made, the Board has to do something regarding the claim. Mr. Lowrey answered that his advice is that the Board should engage the services of an outside investigator to investigate the claim. He stated that, since December, there have been informal attempts to resolve this issue. Mr. Lowrey said that he has worked with the Board President in an attempt to resolve this informally and it has not resolved. He opined that it is appropriate and necessary for the Board to have this investigated. Mr. Lowrey stated that he cannot do the investigation because he is engaged by all the Board members to act with and through the General Manager to advise and represent the District. He added that he and others within the District would be conflicted similarly in representing this, thus his advice to hire an outside investigator.

Director Nishi asked if that was true, why didn't the Board take formal action after the first complaint since the Board and District policy says harassment in any form will not be tolerated. Director Nishi asked why the Board took informal action and not a positive action or investigation. He added that in his mind, he was off the Board in December although he was still getting copied on emails and aware that there was a complaint of a hostile work environment. Director Nishi commented that for over six months, informal action was taken and now the Board is being informed that they need to take action tonight. He asked why this can't be addressed another way, by having the Director conform to the rules all Board members agreed to. Director Nishi asked why the Board let the rules slide and continue to provide a hostile work environment or harassment for one employee who is uncomfortable in his work environment. Mr. Lowrey answered that the Board didn't let the rules slide, they were addressing it in a different way. He added that now a public statement was made at the last Board meeting that requires it to be addressed in this way. Director Nishi stated that he still has his concerns.

Director Gustafson called for the question.

The motion by Vice President Burns to authorize engagement by the District of Jeanine DeBacker of Hoge, Fenton, Jones and Appel to investigate and report on complaint of hostile work environment, and seconded by Director Gustafson, was passed with Director Shriner recused from the dais.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Nishi	-	No	President Lee	-	Yes

9. Workshop:

A. Board Workshop on the Board Procedures Manual and Conflict Recusal Procedures:

Mr. Lowrey introduced this item commenting that he is focusing on Sections 7 and 16 of the Board Procedures Manual (BPM).

Action Item 9-A (continued):

Mr. Lowrey commented that Section 7 has certain provisions that relate to the duties of Directors acting as members of the District Board of Directors. Mr. Lowrey stated that those provisions require Board of Directors to act diligently, to set policy, to review fiscal matters, to be informed and to make prudent decisions. Mr. Lowrey added that there is an understanding that the Board makes reasonable and diligent inquiry, and provides an outside perspective to the General Manager. He commented that there is a requirement that the Board retain and understand the information and diligently attend to the duties of the Director to make decisions in the best interests of the District. Mr. Lowrey added that in most cases, the Directors will need to get that information through the District because the decisions they are making pertain to the District. Mr. Lowrey noted that the BPM requires that the Directors work through the General Manager and Section 16 reads, "The Board and its members shall deal with the administrative services of the District only through the General Manager, except for the purpose of inquiry, and neither the Board nor any individual director shall give orders or instructions to any subordinate of the General Manager. The General Manager shall take orders and instructions from the Board only when sitting in a duly convened meeting of the Board and no individual director member shall give orders or instructions to the General Manager." Mr. Lowrey stated that the purpose for this agenda item is for the Board to discuss balancing the duties of each Board member and the Board collectively to gather information to make a prudent decision. He questioned how each Board member interprets and deals with the phrase "except for purpose of inquiry" when they are interacting with the District so as to not disrupt the District's Mission or the work of the administrative staff. In his opinion, Mr. Lowrey said that if a staff member is approached by a Board member, he would assume the staff member would inform the General Manager of the request before making any response.

Director Shriner stated that in her interpretation, Board members are able to speak to staff members without having to go through the General Manager especially since he is traveling a lot right now and because of his very busy schedule. She commented that there are some Directors that are able to do that and some that are not able to do that. Director Nishi inquired who she was talking about. Director Shriner asked if Director Nishi ever approached staff directly to ask questions. Director Nishi answered that he gets permission from the General Manager before he approaches staff.

Director Nishi commented that in Section 7, there are many items that require Directors to go directly to the General Manager which is the intent of the Director's duties. He voiced his concern that Mr. Lowrey did not know that the intent of what the Board wanted was to have Directors go through the General Manager.

Vice President Burns suggested revising the language to read that Directors must go through the General Manager, or in his absence, the Deputy General Manager/District Engineer.

Action Item 9-A (continued):

Director Shriner asked if the Directors really wanted this small town's elected officials to only be able to ask questions about the Water District of two people. Vice President Burns commented that by having the Directors only approach the General Manager, it takes all the other issues out of the inquiries.

President Lee asked if it would be appropriate to place this on a future agenda to change this language. Mr. Lowrey answered affirmatively.

Director Shriner commented that in her understanding, it is appropriate for Directors to approach staff with inquiries until the language is cleared in the BPM. President Lee answered that since staff would be required to go back to the General Manager before answering anything, the Directors should only approach the General Manager with inquiries, as was suggested by Legal Counsel.

Director Nishi asked Mr. Lowrey to clarify the comment that President Lee made.

Mr. Lowrey answered that according to the language in the BPM, Directors may approach staff with questions, but in his opinion, staff should not give an answer without communicating with the General Manager. Director Nishi stated that the Directors shouldn't be going to the staff members, only through the General Manager.

Mr. Heitzman commented that when he first joined the District, staff was not allowed to talk to any Directors. Since he has been here, he said that four of the Directors routinely call him with questions, some more often than others, and if he can't answer their questions, he refers them to staff. Mr. Heitzman said he then alerts the staff member that a Director will be contacting them about a certain question thus allowing the staff member to have an answer ready for the Director. He said that is the process that has been followed since he started at the District until recently. Mr. Heitzman stated that the same process is used with emails.

Director Shriner commented that the idea of trying to funnel through an individual is a way to make it the most expensive government as possible. She believes that allowing Board members approach staff with simple questions will reduce the cost of government. Mr. Heitzman commented that the reason the BPM is written the way it is, is because Directors have no idea of what duties staff has during the course of a day. He added that if a staff member received a call from a Board member, they would leave their assignments or meeting to attend to the needs of the Director. Mr. Heitzman reaffirmed that is the reason for the language in the BPM.

Director Nishi voiced his concern that Mr. Lowrey is interpreting the language differently than he did 12 years ago. Director Nishi asked if it was okay for a Director to direct consultants to attend meetings.

Action Item 9-A (continued):

Mr. Lowrey answered that he would consider consultants to be treated the same as staff and the fact that a Director approaching a consultant could cost the District additional money for that consultant.

Mr. Lowrey commented that the other item to be discussed is Conflicts of Interest. Director Nishi asked to move on to the next agenda item and to discuss Conflicts of Interest at the next meeting.

10. Director's Comments:

Director Gustafson commented that he will not be attending any more Board Procedure Manual workshops.

Director Nishi asked that an RFP for District Counsel be placed on the next agenda.

Director Shriner commented that she placed three documents on the dais for the Board members. The first is a schedule that was provided to the Board of Supervisors. Director Shriner stated that the green background makes the schedule illegible. She added that the second document is meeting notes from March 31st that are not clear in who produced the notes, no letterhead is used, and the information only lists the items that were talked about. Director Shriner commented that these documents, as they are presented, are of concern to public members. The third document, Director Shriner commented, are meeting notes that she took while attending the ACWA Conference. She added that she was surprised to hear Mr. Curtis Weeks, General Manager for Monterey County Water Resources Agency, claim that the cost for desalinated water would be approximately \$5,000 to \$10,000 per acre feet. Director Shriner stated that she was also surprised to hear that there are other costs the District might bear if the others don't come through in the partnership. She stated that the District was portrayed as an advocate, such as Surftrider.

11. Adjournment:

The meeting was adjourned at 8:27 p.m.

APPROVED:

William Y. Lee, President

ATTEST:

Jim Heitzman, General Manager